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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,560	01/25/2001	Michael Benjamin Ronci		5145

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EDWARD S. SHERMAN, ESQ.
3554 ROUND BARN BLVD.
SUITE 303
SANTA ROSA, CA 95403

EXAMINER	
VERBITSKY, GAIL KAPLAN	
ART UNIT	**PAPER NUMBER**
2859	

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/768,560	RONCI, MICHAEL BENJAMIN	
	Examiner	Art Unit	
	Gail Verbitsky	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 2-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 2-8 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. In light of the newly submitted Declaration Under Rule 131 (October 18, 2004), the finality of the previous Office Action (July 26, 2004) is hereby withdrawn, and prosecution is re-opened.

Claim Objections

2. Claim 2 is objected to because of the following informalities: perhaps applicant should replace "reveal or cover" in line 16 with—cover or reveal--, since the thermochromic ink changes from opaque (when it covers the mark) to transparent (when it reveals the mark). Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 2-3, 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchinson (U.S. 5482373) in view of Ort (U.S. 5867848.

Hutchinson discloses in Figs. 1-4 a fluid retaining beverage/ vessel having a thermochromic display directly attached/ printed onto an outer vertical wall of the vessel with an adhesive/ substrate (integrally).

Hutchinson discloses all the subject matter as claimed by applicant with the exception of the particular thermochromic display.

Ort discloses a vessel with a thermochromic display attached to it to indicate a predetermined temperature of a liquid contained in the vessel. The display comprises a thermochromic coating (ink) which changes its state from opaque to transparent to reveal a message or an ornament under the coating (indicating mark) at an elevated (predetermined) temperature. The display attached/ printed directly onto a surface of interest.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the thermochromic display in the device disclosed by Hutchinson with the display having thermochromic inks, as taught by Ort, because both of them are alternate types of temperature sensing devices which will perform the same function of going from opaque to transparent at a predetermined temperature, revealing an indicating mark/ message, if one is replaced with the other.

5. Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchinson in view of Williams et al. (U.S/ 5809590) [hereinafter Williams].

Hutchinson discloses in Figs. 1-4 a fluid retaining beverage/ vessel having a thermochromic display directly attached/ printed onto an outer vertical wall of the vessel with an adhesive/ substrate (integrally).

Hutchinson discloses all the subject matter as claimed by applicant with the exception of the limitations of claim 4, and that the transparent layer is a thermochromic ink layer, as stated in claim 2, with the remaining limitations of claims 2-4 and 6-8.

Williams discloses a device comprising a thermochromic display having an outer layer of thermochromic ink printed onto a substrate layer, the thermochromic ink layer

goes from opaque to transparent at a predetermined (elevated) temperature revealing a message (indicating marks) under the layer. Williams states the thermochromic inks (first and second) of different activation (predetermined) temperature can be applied/ printed onto the substrate to vary the effect of displayed images (marks). This would imply, that Williams suggests using thermochromic inks with different optical properties (different compositions/ optic transition temperature), so as to make different marks (messages) visible at different temperatures. The display is attached/ printed directly onto a surface of interest.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the thermochromic display in the device disclosed by Hutchinson with the display having thermochromic inks, as taught by Williams, because both of them are alternate types of temperature sensing devices which will perform the same function of going from opaque to transparent at a predetermined temperature, revealing an indicating mark/ message, if one is replaced with the other.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the thermochromic layer of first and second thermochromic composition so as to make them responsive to different pre-determined temperature, as, as taught by Williams, so as to make the display responsive to a variety different pre-determined temperature that would allow to use the display with a variety of beverages.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchinson and Williams.

Hutchinson and Williams disclose the device as stated above in paragraph 5.

Although they clearly disclose a beverage vessel, they do not state that the vessel is a ceramic, as stated in claim 5.

With respect to the particular material to make the vessel, i.e., ceramics, the particular material to make the vessel, absent any criticality, is only considered to be the "optimum" or "preferred" material that a person having ordinary skill in the art at the time the invention was made using routine experimentation would have found obvious to provide for the vessel disclosed by Hutchinson and Williams since this is very well known type of material commonly used to make vessels (mugs and cups), and since it has been held to be a matter of obvious design choice and within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use of the invention. *In re Leshin*, 125 USPQ 416. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to make the vessel, disclosed by Hutchinson and Williams of ceramic, because ceramic is found to be useful to make cups/ mugs, especially coffee cups because of their slow heating.

Response to Arguments

7. Applicant's arguments with respect to claims 2-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

Gail Verbitsky
Primary Patent Examiner, TC 2800

November 04, 2004

I.